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WANG, CLAIRE X				
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* CHING-YU HUNG and DEEPENDRA TALLA

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Appeal 2009-015005  
Application 10/692,154  
Technology Center 2600

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Before MAHSHID D. SAADAT, MARC S. HOFF,  
and THOMAS S. HAHN, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304 or for filing a request for rehearing as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-6, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

## STATEMENT OF THE CASE

### *Prosecution History*

Appellants filed an Appeal Brief on September 1, 2007, to which the Examiner responded by mailing an Answer on January 23, 2008. After the case was docketed to the Board, an Administrative Remand (mailed April 17, 2009) returned the case back to the Examiner for considering whether the claims contain statutory subject matter in view of a memorandum entitled “Clarification of ‘Processes’ under 35 U.S.C. § 101,” issued on May 15, 2008, by the Deputy Commissioner for Patent Examining Policy. The Examiner was directed to further consider the Interim Guidelines and the Manual of Patent Examining Procedure § 2106.IV.B and the decision in *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008)(en banc) in determining whether Appellants’ claimed invention falls within a statutory category of invention.

The Examiner entered a new ground of rejection under 35 U.S.C. § 101 in an Examiner’s Answer (mailed June 3, 2009). The record does not show that a response to this new ground of rejection was filed by Appellants.

### *Invention*

Appellants’ invention relates to re-expressing tetrahedral interpolation by sorting the differentials according to size (Spec. 5). Claim 1, which is illustrative of the invention, reads as follows:

1. A method of tetrahedral interpolation, comprising the steps of:
  - (a) receive a color space input point;
  - (b) compute a base point and three differentials for said input point;
  - (c) compare said three differentials;
  - (d) compute tetrahedron vertices from the results of steps (b) and (c), a first one of said vertices being said base point;
  - (e) find output values for each of said vertices;
  - (f) compute an interpolated output value for said input point as the sum of the output value of said base point plus the inner product of said differentials in size order with corresponding differences of said output values for said vertices.

#### *Rejections*

Claims 1-5 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Claims 1-6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Schoolcraft (U.S. Patent No. 6,466,333 B2, issued Oct. 15, 2002).

#### ANALYSIS

##### *1. 35 U.S.C. § 101 Rejection*

The Examiner's Answer includes a new ground of rejection of claims 1-5 under 35 U.S.C. § 101. Our records indicate that Appellants have failed to respond to the new ground of rejection within two months from the date of the Answer. Accordingly, the appeal as to this rejection of claims 1-5 is dismissed. *See* 37 C.F.R. § 41.39(b)(2010).

2. *35 U.S.C. § 102 Rejection*

Appellants present arguments with respect to the limitations recited in claim 1 (Br. 4-5) and rely on the same arguments to assert patentability of claim 6 (Br. 5). Therefore, we select claim 1 as the representative claim, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner characterizes a rearranged version of the interpolation equation in Table III of Schoolcraft as the claimed inner product of the differentials and concludes that the relationship among the conditional statement meets the claimed size order (Final Rej. 4-5). Appellants contend that Table III of Schoolcraft shows differences of differentials, and not differences of vortex outputs (Br. 4). Further, Appellants argue that Schoolcraft's computations do not include any differential size ordering (*id.*). In response, the Examiner points to various portions of Schoolcraft in support of the proposed rejections and finds that the tetrahedral interpolation of Schoolcraft includes the claimed steps (Ans. 8-12).

We agree with the Examiner's findings and find the Examiner's position to be reasonable. Specifically, we agree with the Examiner's finding (Ans. 8-9) that Schoolcraft teaches the claimed "comput[ing] an interpolated output value for said input point as the sum of the output value of said base point plus the inner product of said differentials in size order." We also find that Appellants' argument that "the Examiner's rearrangement is just hindsight" (Br. 5) to be misplaced since the claim rejection is based on anticipation.

**DECISION**

The appeal as to the Examiner's 35 U.S.C. § 101 rejection of claims 1-5 is dismissed.

We affirm the Examiner's 35 U.S.C. § 102 rejection of claims 1-6.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(v) (2010).

**AFFIRMED**

babc

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